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IN THE HIGH COURT OF JUDICATURE, AT BILASPUR

(C.G.)

Division Bench

CRIMINAL APPEAL NO. 857/2006

APPELLANT

(IN JAIL)

5077/06
23/11/06
Filed on
by Shri
23/11/06

Chandrika Rao Maratha S/o
Dhani Ram aged 38 years
Cultivator and resident of
Kasdol (Indira Colony) in the
police station Kasdol Distt.
Raipur (C.G.)

VERSUS

RESPONDENT

The State of Chhattisgarh
Through the [Police Station
Kasdol District Raipur]
Collector Raipur (C.G.).

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CRIMINAL APPEAL UNDER SECTION 374 (2)

CRIMINAL PROCEDURE CODE

मामला क्रमांक G.A. 857/ सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>Division Bench: -</u> <u>Hon'ble Mr. L.C. Bhadoo, Ag.C.J. and</u> <u>Hon'ble Mr. Sunil Kumar Sinha, J.</u> <u>9-1-2007</u> Mr. Janak Ram Verma, counsel for the appellant. Mr. D.K. Gwalre, Deputy Govt. Advocate for the State/ respondent. Today the matter is listed for hearing on M.(Cri.)P. No.2521/2006, application for suspension of sentence and grant of bail during the pendency of this appeal. With the consent of counsel for the respective parties, arguments were heard for final disposal of this appeal. Oral judgment dictated on <i>Dais</i>. <u>Per L.C. Bhadoo, Ag.C.J.: -</u> This appeal is directed against the judgment of conviction and order of sentence dated 21-8-2006 passed by the 1st Additional Sessions Judge, Baloda Bazaar, in Sessions Trial No.382/2005, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections 302 & 323 of the I.P.C., sentenced him to undergo imprisonment for life and pay a fine of Rs.500/-, in default of payment of fine to further undergo imprisonment for two months and to undergo imprisonment for six months, respectively. The prosecution case, in brief, is that at about 9 p.m. in the night of 27-7-2005 in Indira Colony, Kasdol, the accused started abusing Shanti Bai, he threatened her to kill her and went towards	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक C.A. 357 / सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

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	her to assault her. In the mean time, Tijau Yadav (since deceased) came and intervened, in that process, the accused assaulted the deceased with a crowbar on his head. The matter was reported by Shanti Bai in Police Station: Kasdol, on which the first information report (Ex.P-1) was registered for commission of offence under Sections 294, 506 Part-II & 323 of the I.P.C. Thereafter, injured Tijau was sent for medical examination to the Assistant Surgeon, Kasdol, where Dr. Yogesh Kumar Sharma (PW-9), examined the injuries of Tijau and prepared the injury report Ex.P-12. He noticed that there was a lacerated wound in the size of 1" x ½" muscle deep in the mid line near occipital protuberance about 4" above left ear and the above injury was caused by hard & blunt object. X-ray Ex.P-15 of the head was taken and based on the X-ray report it was found that the bone beneath the injury was found fractured and the report Ex.P-13 was prepared. Thereafter, Tijau was sent to Mekahara Hospital, Raipur. He was discharged from Mekahara Hospital and again he was admitted in the M.M.I. Hospital where he died on 8-8-2005. Merg intimation Ex.P-8 was sent to the Police Station. Post-mortem on the body of Tijau was conducted by Dr. Vikas Kumar Dhruw (PW-7), Medical Officer, Forensic Medicine Medical College, Raipur, who prepared the post-mortem report (Ex.P-9) and he opined that the death was due to cardio respiratory failure as a result of head injury and its complications. On receiving the merg intimation, offence was converted to Section 302 of the I.P.C.	

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आदेश पत्रक (पूर्वानुबद्ध)

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	After giving notice Ex.P-2 to the Panchas, inquest report Ex.P-3 on the body of Tijau Yadav was prepared. During police custody, the accused gave memorandum Ex.P-4 regarding the place where he kept the crowbar, the weapon of offence, and in pursuance of that, the crowbar was got recovered at the instance of the accused under Ex.P-5. After usual investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Baloda Bazaar, who in turn committed the case to the Sessions Judge, Raipur, from where learned 1st Additional Sessions Judge, Baloda Bazaar received the case on transfer for trial. The prosecution in order to establish charge against the accused examined 15 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that as Shanti Bai was in the habit of selling illicit liquor, he used to object and what happened he does not know, there was no dispute regarding the land. Learned Additional Sessions Judge after hearing respective counsel and perusal of record, convicted and sentenced the accused as aforementioned. We have heard Mr. Janak Ram Verma, learned counsel for the appellant and Mr. D.K. Gwalre, Deputy Govt. Advocate on behalf of the State/respondent. Mr. Verma has not disputed the homicidal death of Tijau Yadav. Apart from that, based on the ocular evidence of Shanti Bai (PW-1), Sanjay Rao (PW-6), Firtu Ram (PW-13) & Teejram	

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	Yadav (PW-14), as also the medical evidence of Dr. Vikas Kumar Dhruw (PW-7), it is established that the death of Tijau Yadav was homicidal in nature. As far as involvement of the accused in the crime in question is concerned, the crime in question was witnessed by Shanti Bai (PW-1), Sanjay Rao (PW-6), Firtu Ram (PW-13) & Teejram Yadav (PW-14). They have stated that the accused attacked the deceased with the crowbar as a result of which the deceased received fatal injury on the occipital region. Their evidence stands corroborated by the medical evidence of Dr. Dhruw (PW-7). In the cross-examination of these witnesses, defence has not been able to bring on record any circumstance which discredits the evidence of these witnesses. Therefore, involvement of the accused in the crime in question is established and to that extent we do not find any illegality or infirmity in the judgment of the trial Court. Learned counsel for the appellant argued that from the facts and circumstances of the case it is evident that when accused Chandrika Rao Maratha was quarrelling with Shanti Bai, the deceased came and intervened and in that process, all of a sudden without any premeditation in a heat of passion the accused assaulted the deceased only once. Moreover, the incident took place on 27-7-2005 and Tijau Yadav died on 8-8-2005 i.e. about 12 days after the date of incident, that too on account of pus formation, therefore, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.	

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	On the other hand, Mr. Gwalre, learned Deputy Govt. Advocate supported the judgment of the trial Court. In order to appreciate the arguments advanced by the respective counsel, we have perused the evidence. It is admitted position that the incident took place on 27-7-2005 and Tijau Yadav died on 8-8-2005. Shanti Bai (PW-1) has stated in her evidence that she took the land from Chandrika Rao, the accused/appellant herein, for construction of house and on that land, she put bricks & boulders for construction of house. Chandrika Rao came and started abusing her in filthy language and he attacked her with a club as a result of which she sustained injury on her head. At that time, Tijau Yadav came and started intervening and said that as to why they are quarrelling, in the mean time, the accused left the club, picked up a rod and attacked with the rod on the head of Tijau as a result of which Tijau fell down. Similar is the evidence of other witnesses. Therefore, in view of the above evidence, it is clear that when the accused was abusing and attacking Shanti Bai, Tijau intervened and in that process all of a sudden in a heat of passion without any premeditation, the accused assaulted only once on the head of the deceased as a result of which he received injury on his head, bone was fractured and he died after 12 days of the incident on account of pus formation in the head. In the circumstances, we are of the considered opinion that in view of the above evidence, it is established that the accused is entitled for the benefit of Exception 4 to Section 300 of the I.P.C.	

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	In the result, the appeal filed by the accused/appellant partly succeeds and the same is partly allowed. Conviction and sentence imposed upon the accused/appellant under Section 302 of the I.P.C. are set aside, instead thereof, he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for five years. However, conviction and sentence under Section 323 of the I.P.C. for attacking Shanti Bai are maintained. Both the sentences shall run concurrently. It is stated that the accused is in detention since 14-8-2005 till date. The accused shall be entitled for set-off against the above sentences imposed upon him. In view of this order, M.(Cri.)P.No.2521/2006 stands disposed of.	
	Sd/- Acting Chief Justice	Sd/- Sunil Kumar Sinha Judge
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